



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 20, 2016  
MAHS Docket No.: 16-013261  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on [REDACTED] [REDACTED] from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Eligibility Specialist; and [REDACTED], Family Independence Manager.

### **ISSUE**

Did the Department properly close the Petitioner's Food Assistance Program (FAP) due to Petitioner having an ineligible student status?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department conducted a Semi-Annual Review of the Petitioner's FAP case which was completed on [REDACTED]. Exhibit 1.
2. In the Semi-Annual Contact Report, the Petitioner reported income of \$ [REDACTED] a month noting BEM 504, room and board. Exhibit 1, page 2.
3. The Department issued a Notice of Case Action dated [REDACTED], closing the Petitioner's FAP effective [REDACTED], for the reason that the Individual (Petitioner) is not an eligible student.

4. The Petitioner completed a Self-Employment Income and Expense Statement on [REDACTED], advising the Department that she had \$ [REDACTED] in earned income. The Petitioner also completed Section III of the form and indicated \$ [REDACTED] expenses associated with her self-employment. Exhibit 5.
5. The Petitioner filed a change report with the Department dated [REDACTED] advising the Department that she had stopped attending university as of [REDACTED]. The Petitioner also checked "yes" that the reported change was expected to continue next month. Petitioner's Exhibit A. Although the Department did not have a record of this information in the electronic case file, a fax confirmation was provided by Petitioner for [REDACTED], confirming that the change report was sent to the Department, and was sent via fax to [REDACTED]. Petitioner's Exhibit A.
6. At the hearing, the Petitioner advised that [REDACTED] charges a fee of 3% for any confirmed rental of the room in her house. The fee is deducted by [REDACTED], and the balance is sent to the Petitioner. The Petitioner's room rentals fluctuate on a monthly basis.
7. The Department, based upon the earned income reported by Petitioner, determined that the Petitioner's monthly income was \$ [REDACTED] Exhibit 5.
8. In an earlier Hearing Decision by Administrative Law Judge Robert Chavez issued [REDACTED], he found that the Department improperly determined the Petitioner's income to be unearned income and that the in-home rental earned from [REDACTED] by the Petitioner was earned income and reversed the Department. At the time of this Decision, the Petitioner was a full-time student in student status. Exhibit 8.
9. The Department completed an FAP Edg Net Income Results for the Petitioner's FAP budget for the [REDACTED], benefit period which determined that the net benefit amount was \$ [REDACTED] Exhibit 7.
10. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's actions.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The

Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department closed the Petitioner's FAP case when it determined that she was not eligible for FAP as a student because her income did not meet the required weekly income to qualify as a self-employed student. The Petitioner is self-employed and rents a room in her home through [REDACTED]. [REDACTED] is an online service that acts as a middle man to people wishing to sublet extra rooms in their home on a temporary basis.

At the hearing, the Department contended that the Petitioner's reported room rental income did not meet the income requirement per week required of a student. The Petitioner was enrolled in a post-secondary program and filed a change report on [REDACTED], advising the Department she was not enrolled in school, and that she stopped attending university on [REDACTED]. The Petitioner answered yes to the question whether the change was expected to continue next month. The Department apparently did not receive the change report, but the Petitioner did provide a fax confirmation that it was sent to a [REDACTED] number, (see Finding of Facts, paragraph 5) and received; thus, it is concluded the Department was advised that as of [REDACTED] the Petitioner was not a student. Department policy requires the Department verify school enrollment for persons ages 18-49 attending a post-secondary education program. This must be verified at application, redetermination and reported change. BEM 245, p. 11, post-secondary school enrollment:

- DHS-3380, Verification of Student Information.
  - Telephone contact with the school.
  - Other acceptable documentation that is on official business letterhead.
- BEM 245, p. 11.

Because the Department did not verify the change in student status after [REDACTED], it incorrectly continued the Petitioner in student status.

Because the Department did not receive the change report through no fault of the Petitioner, it continued to assume that she was still and continued to be a student. At the hearing, the Petitioner credibly testified that she resumed her education on [REDACTED], and has now stopped university as of [REDACTED], indefinitely. However, the period that is under consideration in this hearing would be the [REDACTED] Semi-Annual Contact Report and Department review.

A person enrolled in a post-secondary education program may be in student status, as defined in this item. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, (July 1, 2016), p. 2

The person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p. 5

In this case, the Petitioner did not attend university from [REDACTED], or for approximately four (4) months and, thus, demonstrated she was not in student status. The Department unfortunately, because it did not receive the change report from the Petitioner, assumed that she was still in student status even when it received the [REDACTED] Semi-Annual Contact Report, which indicated nothing had changed. The Petitioner assumed, based on filing of the change report, that nothing had changed, i.e., she was not a student. Based upon the proofs presented, it is determined that the Petitioner was not in student status for two semesters during the period beginning [REDACTED], when she testified that she resumed her education. Thus, at the time of the Semi-Annual Contact Report, the Petitioner's income should have been determined as earned income from self-employment and FAP benefits determined on a **non-student status basis**.

At the hearing, the Petitioner contended that she was self-employed, and that her business was not passive, and that room rental was only part of her business and should be considered a Schedule C business, even though last year her income was not enough to cause her to file income taxes. The Petitioner testified that she provided other services in addition to room rental, which included pick up from the airport, massage and guided tour services around [REDACTED] Michigan. As best can be determined, the Petitioner did not previously advise the Department that she did not consider her income from self-employment to be only from in-home room rental; and further, the Department was entitled to rely on the Hearing Decision that found the Petitioner's income to be earned income from in-home room rental, and could also rely on the Self-Employment Income and Expense Report she filed on [REDACTED], which listed in home rental for \$ [REDACTED] a month with no expenses or other income from other services. Exhibit 5 (see also Semi-Annual Contact Report).

The Petitioner also advised at the hearing that she shared a meter for water and heating with the upstairs flat and could not assess any appreciable expense increase with regard to utilities. [REDACTED] the service that connects Petitioner's room rental to customers, takes a 3% expense fee, which was not reported by the Petitioner until the hearing as she had previously reported zero expenses. The Petitioner advised that if the fee is added back into the gross rental monthly amount, the monthly income would be \$ [REDACTED]. The Petitioner did not provide detail as to how many individual's she picked up at the airport and did not report what any of the associated expenses incurred might be. She also did not advise the Department of the services she offered with regard to her self-employment business. It appeared that the Petitioner's business is still developing and that it was also a reasonable assumption by the Department that she was primarily involved in an in-home rental business through [REDACTED].

As regards the Department, the Department used the income reported and testified it used policy found in BEM 504 to determine the Petitioner's income from self-employment with regard to in-home room rental and expenses. The Department testified that Petitioner did not meet the student income eligibility threshold of \$ [REDACTED] but could not say what the gross self-employment income was that was determined by the Department. See BEM 245 (October 1, 2016), pp. 3-4, which specifies income to qualify as a self-employed student working 20 hours per week earning weekly income at least equivalent to federal minimum wage multiplied by 20 hours. The Department testified that its Bridges system made the calculation. The Budget presented was of no use as the calculations behind the budget were not provided or explained specifically.

The Department did not seek verification of expenses associated with Petitioner's business and apparently should have applied the higher of 60% of gross income as the expense for in-home room rental to determine gross income or actual expenses. In this case, the Petitioner originally reported \$ [REDACTED] in expenses. In an earlier hearing decision by Administrative Law Judge Robert Chavez issued [REDACTED], he found that the Department improperly determined the Petitioner's income to be unearned income and that the in-home rental earned from [REDACTED] was earned income and reversed the Department. At the time of the ALJ Chavez Decision, the Petitioner was a full-time student in student status. The Budget as presented by the Department did not demonstrate support for its determination to close the Petitioner's FAP case.

Policy found in BEM 504 sets forth policy regarding Income from Rental/Room and Board. It describes various income types and their treatment. BEM 504 (July 1, 2014) p. 1. Rental income is defined as money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. It includes income from a lease. BEM 504, p. 1. The Petitioner's rental has been determined to be the type of rental known as In-Home Rental. Department policy defines this as:

In-home rental is when a landlord rents out part of his own dwelling to another individual. Bridges counts the gross rent payment minus expenses as earned income from self-employment.

**Bridges allows the higher of the following**

60% of the rental payment

Actual rental expenses if the landlord chooses to claim and verify expenses.

Expenses must be both of the following:

Clearly expenses of the rental unit (for example expenses the landlord would not have if not renting out part of his dwelling).

Included in the list of allowable rental expenses below. BEM 504 (July 1, 2014), p.2

The Petitioner was determined to be self-employed and for the period she was a student she would have to demonstrate that her income met the following:

**Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours. BEM 245 (October 1, 2016), pp. 3-4.**

However, given the fact that for the period from [REDACTED] [REDACTED] the Petitioner was determined to not be a student, the actual calculation used to determine her student status eligibility based upon self-employment income from in home rental is no longer an issue.

When determining in home rental expense, the Petitioner must verify expenses associated with self-employment if she chooses to do so. The Department per policy must apply the higher of actual expenses or 60% of gross income as the expense. The Petitioner's [REDACTED] income is not a traditional case of a landlord renting a room 30 days of each month, but a more sporadic rental schedule, and as such, more traditional expense allocation is difficult and can only be used if an FAP recipient reports expenses. As can be seen from the list of expenses below, many of the expenses may not apply in the Petitioner's situation particularly because most of the expenses are expenses that Petitioner would continue to incur and have whether she was renting a room out or not renting out part of the home. However, because the Petitioner's income fluctuates, the Petitioner is required to report any income change which might affect her FAP benefit amount via change report. An FAP recipient who is self-employed is required to report income and expenses from any services she also provides with her in-home rental self-employment.

Expenses must be both of the following:

- Clearly expenses of the rental unit (for example expenses the landlord would **not** have if **not** renting out part of his dwelling).
- Included in the list of allowable rental expenses below. BEM 504 (July 1, 2014), p. 2

When a landlord chooses to report actual expenses for in-home rental or other rental income, Bridges uses the following to determine what expenses are allowable and should be entered in Bridges.

Expenses must be the landlord's obligation and must solely be expenses of the rental property to be allowed. Allowable expenses may include:

- Real estate insurance.
- Repairs.
- Heat.

- Utilities.
- Property taxes.
- Lawn care.
- Snow removal.
- Furniture.
- Advertising for renters.
- Interest and escrow portions of mortgage or land contract payment.

BEM 504, p. 4

Thus, in conclusion, the Department must review its actions and review the Petitioner's Semi-Annual Contact Report in light of the change report provided and the fact that during the period [REDACTED], the Petitioner was not in student status and recalculate FAP benefits accordingly. The Department shall use the earned income as testified to at the hearing, which includes the 3% [REDACTED] fee of \$ [REDACTED] a month and apply the in-home rental expense to that figure.

### DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department **did not** act in accordance with Department policy when it closed the Petitioner's FAP case due to ineligible student status and failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the Petitioner's self-employment income.


Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reinstate the Petitioner's FAP and determine the Petitioner's benefits based upon in home room rental self-employment and use the income associated with the Airbnb business in home rental income.
2. The Department shall consider Petitioner's eligibility based upon non student status for the period [REDACTED].
3. The Department shall issue an FAP supplement to the Petitioner if Petitioner is otherwise entitled to same in accordance with Department policy.

4. The Department shall provide written notice to the Petitioner of its determination.

LMF/jaf



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**Lynn M. Ferris**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Via email**

[REDACTED]